

STATE OF MICHIGAN
COURT OF APPEALS

JAMES LIEDEL,

Plaintiff-Appellant,

v

JANIS R. HOLLAND,

Defendant-Appellee.

UNPUBLISHED

January 6, 2005

No. 249772

Wayne Circuit Court

LC No. 02-211394-NO

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff James Liedel appeals as of right the trial court's order dismissing his complaint seeking dismissal of an order renewing judgment for lack of personal jurisdiction. We affirm.

I. Material Facts and Procedural History

The basic facts of this case are undisputed. On June 26, 1990, defendant Janis Holland obtained a judgment in her favor in the amount of \$150,000 against Liedel. On May 26, 2000, Holland filed a complaint for renewal of the June 26, 1990, judgment. Also on May 26, 2000, Holland filed a motion for substituted service of process pursuant to MCR 2.105(I), seeking an ex parte order allowing service of the summons and complaint by first class mail and certified mail, return receipt requested.

On May 26, 2000, the trial court entered an order providing that personal jurisdiction over Liedel could be obtained by mailing a copy of the summons and the complaint along with a copy of the order itself by both certified mail, return receipt requested, and by first class mail to Liedel's last known address. On October 13, 2000, the trial court entered an order renewing the June 26, 1990, judgment pursuant to MCL 600.5809(3).

On April 5, 2002, Liedel filed the complaint in the instant case, seeking dismissal of the order renewing the June 26, 1990, judgment as void for lack of personal jurisdiction. On July 30, 2002, Liedel brought a motion for summary disposition under MCR 2.116(C)(9), arguing that the trial court's October 13, 2000, order was void for lack of personal jurisdiction. On October 1, 2002, the trial court denied Liedel's motion for summary disposition. Judge Edward M. Thomas, noting that he presided over the trial and that he could remember the facts of the case very well, found that it was a proper exercise of the court's discretion to allow substituted

service and to permit service upon Liedel at the post office box address, which was the only place it was represented that Liedel could be served.¹

Judge Colombo ordered each of the parties to submit a pretrial brief regarding the legal issues of this case. Upon review of the pretrial briefs, the trial court dismissed the case. The trial court agreed that the motion was not verified, but determined that to be a minor procedural defect that could be cured. The trial court noted that regardless of the defect, there was no evidence that the information contained in the ex parte motion was erroneous. The trial court then determined that the facts contained in the motion provided a sufficient basis for the trial court to conclude that Liedel could not be served under the normal processes set forth in MCR 2.105. The trial court further concluded that because Liedel's last known address was "known," there was no need for Holland to demonstrate that diligent inquiry had been made to determine Liedel's address.

Regarding Liedel's argument that the motion did not comply with MCR 2.105(I), the trial court determined that aside from two minor procedural defects, the order complied with the court rule. The court found that there was a sufficient foundation to issue the order for substituted service of process. The trial court further noted that there was no requirement that the order specifically find that service of process could not be reasonably made under other provisions of MCR 2.105 or that the manner permitted by the court for substituted service of process was reasonably calculated to give Liedel actual notice because such findings were implicit in the trial court's order. On July 1, 2003, the trial court entered an order of dismissal.

II. Personal Jurisdiction

The issue before this Court is whether the October 13, 2000, judgment of renewal² is void under MCR 2.612(C)(1)(d) because the trial court lacked personal jurisdiction over Liedel. Assuming for purposes of this opinion that Liedel's argument under MCR 2.105(I) is correct, we still hold that the judgment of renewal is valid because the trial court had personal jurisdiction over Liedel in the underlying case.

Whether the trial court has personal jurisdiction is a question of law that this Court reviews de novo on appeal. *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001). "When there is a want of jurisdiction over the parties or the subject matter, no matter what formalities may have been taken by the trial court, the action is void because of its want of jurisdiction." *Altman v Nelson*, 197 Mich App 467, 472-473; 495 NW2d 826 (1992).

According to case law, if there is a continuation of an original action, there is also a continuation of personal jurisdiction. "Any subsequent action based on the original judgment, even if brought pursuant to a new complaint, is deemed to be a continuation of the original action

¹ Judge Thomas was subsequently disqualified because he was listed as a potential witness, and the case was reassigned to Judge Robert J. Colombo, Jr.

² The statutory provision permitting renewal of judgments, such as the judgment previously entered in relation to this case, is found at MCL 600.5809(3).

so that jurisdiction is proper in the court that rendered the original judgment.” *Ewing v Bolden*, 194 Mich App 95, 101; 486 NW2d 96 (1992).³ See also *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 459-460; 674 NW2d 731 (2003); *McGraw v Parsons*, 142 Mich App 22, 25; 369 NW2d 251 (1985). Here, the subsequent action brought by Holland to renew the original judgment was merely a continuation of the original judgment, and thus the trial court would have continued personal jurisdiction over Liedel, if jurisdiction was proper in the court that rendered the original judgment. *Id.* Accordingly, if Holland obtained valid personal jurisdiction over Liedel in the original action, there is a continuation of personal jurisdiction over Liedel in Holland’s complaint for renewal.

Here, it is apparent that the trial court had personal jurisdiction in the original action. First, Liedel has not contested the trial court’s jurisdiction in the original action. Further, upon review of the lower court record in LC No. 87-711497-NO, there is no indication that Liedel ever contested personal jurisdiction in the original action. Liedel did not raise the issue of personal jurisdiction as an affirmative defense in the original action. Additionally, Liedel submitted several motions regarding discovery, responsive pleadings, and a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) in the original action, none of which contested personal jurisdiction. Therefore, as the trial court retained personal jurisdiction over Liedel in the subsequent action, Liedel’s argument that the trial court lacked personal jurisdiction necessarily fails.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski

³ In *Ewing*, the Court determined that an action filed to collect the original judgment was a continuation of the original divorce action and that the trial court continued to have personal jurisdiction over the defendant. *Ewing, supra* at 101.